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(Mass.).—Where deceased, at the time he was killed while walking on defendant's street car track, was 78 years of age and very deaf, *held*, his want of hearing made it incumbent on him to be more alert in the use of his other senses.

It is not, as a matter of law, negligence for a man 79 years old, blind in one eye and of defective hearing, to drive unattended on a public street. *Robbins v. Springfield Street Ry. Co.*, 165 Mass. 30. Nor is it necessarily negligence for a blind person to be unattended on the street. *Smith v. Wildes*, 143 Mass. 556. The test in such cases is: Under the special circumstances what care is reasonably necessary to insure safety? *Neff v. Wellesley*, 2 L. R. A. 500. An infirm person must use such care as one with such infirmity and conscious of it should use. *Cleveland C. & C. R. Co. v. Terry*, 8 O. St. 570. The extent of care is greater for a person suffering from an infirmity to avoid danger. *Mark's Adm'r v. R. R. Co.*, 88 Va. 1.

TELEGRAPHS—DELAY IN DELIVERY OF MESSAGE—DAMAGES FOR MENTAL SUFFERING.—*GEROCH v. WESTERN UNION TELEGRAPH CO.*, 54 S. E. 782 (N. C.).—*Held*, that where, by reason of defendant's delay in delivery of a telegram announcing plaintiff's illness to her husband, the addressee was detained for nearly two days in reaching her bedside and the plaintiff testified that the delay caused her great anxiety, mental suffering, and a nervous chill, whether damages were recoverable for the defendant's negligence in addition to the price of the telegram was for the jury.

This case holds with the minority rule that in some cases damages are recoverable for mental suffering. In most of the states the rule is that damages are not recoverable for mental suffering alone. *Chase v. Western Union Telegraph Co.*, 44 Fed. 554. The first departure in any way from the rule was made by allowing mental agony to increase the damage resulting from physical injury. *Phillips v. Hoyle*, 4 Gray 568 (Mass.).—Texas in 1881 first extended this rule and allowed recovery for mental suffering alone when occasioned by delay in the delivery of a telegram. *So. Relle v. Western Union Telegraph Co.*, 55 Texas 308. A minority of the states has followed this holding. *Green v. Western Union Telegraph Co.*, 136 N. C. 489. It must be apparent on the face of the message that delay in delivery will cause mental suffering. *Western Union Telegraph Co. v. Warren*, 36 S. W. 314 (Tex.). A few jurisdictions limit the right of recovery to the sender. *Western Union Telegraph Co. v. Henderson*, 89 Ala. 510. The law of the state to which the message is sent will govern whether a recovery shall be had or not. *Gray v. Tel. Co.*, 91 Am. St. Rep. 706.